

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELVIS LEONARD PRESSLEY,

Defendant-Appellant.

UNPUBLISHED

October 1, 1999

No. 210437

Wayne Circuit Court

LC No. 97-006468

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of one count of assault with intent to commit murder, MCL 750.83; MSA 28.278,¹ one count of arson of a dwelling house, MCL 750.72a; MSA 28.267a, and one count of arson of personal property, MCL 750.74b; MSA 28.269b. Defendant was sentenced to concurrent terms of six to fifteen years' imprisonment for the assault conviction, four to twenty years' imprisonment for the arson of a dwelling house conviction, and six months to four years' imprisonment for the arson of personal property conviction. We affirm.

I

Defendant first argues that he was unduly prejudiced by the introduction of evidence regarding his assault of Chanda George. The decision whether to admit or exclude evidence is within the trial court's discretion. This Court will find an abuse of discretion only when an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

It is essential that prosecutors be able to give the jury an intelligible presentation of the full context in which disputed events took place. *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). Accordingly, evidence of other criminal acts is admissible when so blended or connected with the crime of which defendant is accused that proof of the other acts explains the circumstances of the crime. *Id.* at 742. For this reason, while evidence of other acts is not admissible to prove the character of a defendant, such evidence is admissible to prove motive. See MRE 404(b)(1).

In the present case, the prosecutor presented evidence that defendant kicked in the door of Chanda George's apartment, told her male companion to leave, and then proceeded to terrorize Chanda throughout the night by hitting her and cutting her hair. Defendant was still at the apartment when Michelle George, Chanda's sister, arrived the next morning. Michelle told defendant to leave and stated that she would call the police; defendant responded that if he had to go to jail, he would firebomb her house and kill her entire family. After defendant left, Michelle did contact the police. Nine days later, Michelle awoke to find her house on fire; the cause was determined to be arson by means of an incendiary device.

We conclude that the trial court did not abuse its discretion in admitting evidence relating to defendant's assault on Chanda. See *Ullah, supra*. The evidence was offered to explain defendant's motive for the charged crimes, which is permissible under MRE 404(b). No evidence was presented regarding whether defendant was arrested or prosecuted for the assault. Furthermore, the trial court instructed the jury that it was to consider evidence of the assault only for the limited purpose of determining whether it demonstrated a motive or plan. Although defendant correctly states that the evidence was not admissible to show that defendant had a bad character or a propensity to commit crime, evidence which is admissible for one purpose is not inadmissible where its use for a different purpose is precluded. *People v Rice (On Remand)*, 235 Mich App 429, 441; 597 NW2d 843 (1999).

Defendant also asserts that he was unfairly prejudiced by the prosecutor's failure to give notice of its intent to introduce evidence of the assault. We disagree. An explanation of the circumstances under which defendant threatened Michelle was necessary to give the jury an intelligible presentation of the full context in which the event took place. See *Sholl, supra* at 741. In fact, defense counsel admitted that he knew information regarding the incident would be introduced.

II

Defendant next argues that he is entitled to a new trial because the prosecutor violated a discovery order by failing to provide the defense with a copy of photographs that he attempted to enter into evidence.² We review a trial court's sanction for the failure to comply with a discovery order for an abuse of discretion. See *People v Davie*, 225 Mich App 592, 599; 571 NW2d 229 (1997); *People v Johnson*, 206 Mich App 122, 126; 520 NW2d 672 (1994).

We find no abuse of the trial court's discretion. The prosecutor was not allowed to introduce the photographs at trial. We reject defendant's contention that he was entitled to a mistrial because of the prosecutor's reference to the photographs, which showed Chanda after defendant had cut her hair. During his own testimony, defendant admitted that he had cut Chanda's hair. Defendant was not unduly prejudiced because the jury was made aware of the existence of photographs depicting his handiwork.

III

Defendant next argues that his convictions must be reversed because of prosecutorial misconduct. When reviewing instances of alleged prosecutorial misconduct, this Court must examine

the pertinent portion of the record and evaluate the prosecutor's remarks in context. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Green*, 228 Mich App 684, 692-693; 580 NW2d 444 (1998).

First, defendant claims that the prosecutor impermissibly asked a defense witness whether she was on probation for welfare fraud. Defendant argues that, because the witness was not convicted of welfare fraud, the question was prohibited under MRE 609. However, we agree with the prosecutor that the question was not improper because it was permissible under MRE 608(b). Under MRE 608(b), the trial court has discretion to permit inquiries into specific instances of the conduct of a witness for the purpose of attacking the witness' credibility if the conduct is probative of truthfulness or untruthfulness. See *People v Brownridge*, 459 Mich 456, 463-464; 591 NW2d 26 (1999). Because fraud involves elements of dishonesty and false statement, whether the witness had committed welfare fraud could reasonably be considered probative of her credibility. See *People v Allen*, 429 Mich 558, 586; 420 NW2d 499 (1988), quoting *Gordon v United States*, 127 US App DC 343, 347; 383 F2d 936 (1967); *People v Johnson*, 105 Mich App 332, 343; 306 NW2d 501 (1981). Thus, the prosecutor's question, which essentially asked whether the witness had committed welfare fraud, did not deny defendant a fair trial.

Defendant further asserts that the prosecutor improperly made repeated references to defendant's assault on Chanda. However, as previously discussed, evidence of the assault was admissible for the purpose of explaining the circumstances of the crime, and therefore the prosecutor did not act improperly in referring to it.

In addition, defendant maintains that he was unfairly prejudiced because the prosecutor described him as "nasty" and "portrayed [him] as a deceptive, dishonest person." However, the prosecutor is free to argue the evidence and all reasonable inferences from the evidence as it relates to his theory of the case, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), and he is not required to state inferences and conclusions in the blandest possible terms, *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996).

Defendant also asserts that he was denied a fair trial when the prosecutor attacked his reputation during the opening statement, questioned him regarding the date on which he was arrested, and elicited testimony that defendant was living with one woman while sleeping with another. However, defendant has abandoned these allegations of prosecutorial misconduct by failing to provide accurate citations to the record. It is not enough for an appellant simply to announce a position or assert an error in his brief and then leave it up to this Court to discover and rationalize the basis for his claims. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

IV

Finally, defendant argues that the trial court improperly denied his motion for a directed verdict on the charge of assault with intent to commit murder. When ruling on a motion for a directed verdict, the trial court must consider the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determine whether a rational trier of fact could

find the essential elements of the charged crime were proved beyond a reasonable doubt. When reviewing a trial court's ruling on a motion for a directed verdict, this Court tests the validity of the motion by the same standard as the trial court. *People v Warren*, 228 Mich App 336, 345-346; 578 NW2d 692 (1998), lv gtd 460 Mich 851; 595 NW2d 858 (1999).

The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). The intent to kill may be proven by inference from any facts in evidence. *Id.*

Here, the prosecutor presented evidence that defendant threatened to kill Michelle George and her family by firebombing the house in which they lived. Approximately nine days later, there was a fire at their house. The fire occurred at 3:00 a.m., when the occupants of the house were asleep. Michelle George and a Detroit firefighter both testified to seeing defendant sitting in a car in the vicinity. An expert testified that he had found evidence of a firebomb on the premises. Viewing this evidence in the light most favorable to the prosecution, a rational trier of fact could find the essential elements of assault with intent to commit murder were proved beyond a reasonable doubt. Accordingly, the trial court properly denied defendant's motion for a directed verdict. See *Warren*, *supra*.

Defendant argues that there was no evidence presented that defendant knew that Michelle would be at her mother's house on the night of the crime. However, such knowledge could be inferred by the factfinder from defendant's presence at the scene. See *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) ("Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime.").

Defendant also maintains that there was no evidence presented that defendant intended to kill Michelle. This argument is totally devoid of merit. Michelle testified that defendant told her "that he was going to fire bomb our house if he went to jail and that he was going to kill me and my family." Moreover, even in the absence of the direct threat, the factfinder could infer the intent to kill from the fact that the firebombing occurred at 3:00 a.m., when people are likely to be at home and asleep. See *Barclay*, *supra*.

Affirmed.

/s/ Jeffrey G. Collins
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

¹ Defendant was acquitted of one count of assault with intent to commit murder.

² The prosecutor explained to the trial court that he had only come into possession of the photograph that day.